

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JAMES C. SHERROD,

Plaintiff

vs.

BOOKER T. WASHINGTON CENTER,

Defendant

Civil Action No. C.A. 04 – 208 ERIE

**Magistrate Judge Susan Paradise
Baxter**

JURY TRIAL DEMANDED

MOTION TO AMEND PRETRIAL SCHEDULE NUNC PRO TUNC

AND NOW, comes the Defendant, BOOKER T. WASHINGTON CENTER, by and through its attorneys, Quinn Buseck Leemhuis Toohey & Kroto, Inc., and the Plaintiff, James C. Sherrod, through his attorney, Edith Benson, and together submit the following Motion to Amend Pretrial Schedule.

1. The instant action was filed on July 21, 2004.
2. Pursuant to the Court's verbal direction following argument on Plaintiff's Motion to Compel Discovery and Impose Sanctions, the Defendant was to provide supplemental responses to certain Requests for Admission on or before July 5, 2005, which supplemental responses were provided on July 1, 2005.
3. Further, the Court directed that the three (3) following depositions be conducted, as noticed by the parties at that time. Specifically, the depositions of Sean Coleman and William Jeffres were to take place on June 22, 2005. The deposition of James C. Sherrod was to take place on or before July 5, 2005.

4. The Court then set September 9, 2005 as the filing deadline for Plaintiff's Pre-trial Narrative Statement, and September 29, 2005 for Defendant's, as well as for the filing of dispositive motions.

5. Due to the limited availability of the parties and counsel at that time, these depositions were postponed by mutual agreement.

6. The parties were able to complete the deposition of Sean Coleman on June 28, 2005, and the deposition of William Jeffres on July 27, 2005.

7. The deposition of the plaintiff, James C. Sherrod, was scheduled for July 29, 2005.

8. At the time of William Jeffres's deposition on July 27, 2005, however, it was apparent that Mr. Sherrod was unlikely to be available to sit for a deposition on July 29. As his counsel advised, he was suffering from a very painful back problem, for which he was (and remains) under a doctor's care. He was in obvious pain and discomfort throughout the day, and had extreme difficulty concentrating on the events of the day.

9. After taking prescription pain killers, Mr. Sherrod's pain seemed to decrease, but his attention span was very limited, and he dozed off several times.

10. On July 28, 2005, Attorney Benson advised that Mr. Sherrod would not sit for his deposition on July 29. Exhibit A.

11. Attorney Martinucci was in agreement with this because he was concerned with Mr. Sherrod's ability to understand and answer questions at that time.

12. Subsequently, Attorney Benson has kept Attorney Martinucci informed as to Mr. Sherrod's medical condition and treatment plan. Exhibits B and C.

13. Because of Mr. Sherrod's medical condition, the parties jointly petitioned the Court to modify the then-pending pre-trial schedule on September 9, 2005.

14. This request was granted by the Court on September 13, 2005.

15. Since that time, counsel have communicated regarding Mr. Sherrod's treatment and prognosis.

16. On October 8, 2005, Sherrod's counsel advised counsel for the Defendant that Mr. Sherrod was willing to attempt to sit for a deposition, subject to certain conditions. Exhibit D

17. On October 15, 2005 counsel for the defendant responded, indicating that October 21, 2005 would be acceptable for Sherrod's deposition, but only if Sherrod were, in fact, capable of sitting for at least a 3 hour deposition, with the Defendant reserving the right to continue the deposition after Sherrod's scheduled surgery and anticipated recovery period. Exhibit E.

18. On October 18, 2005, however, Sherrod's counsel expressed reservations about Sherrod's ability to effectively participate in his own deposition if taken on October 21, 2005. Exhibit F.

19. Mr. Sherrod underwent surgery on October 25, 2005.

20. It was anticipated that his recovery will take between 3-6 weeks.

21. Counsel for the Defendant deferred to Sherrod's counsel on this point, and the parties agreed to seek a further enlargement of the pre-trial schedule from this Honorable Court because, in fairness to both parties, it was impractical to have Sherrod sit for a deposition when it appeared he could not fully or effectively participate in the deposition process.

22. It appears that the surgery was successful; Plaintiff's counsel advised Counsel for the Defendant on November 29, 2005 that Sherrod was available to be deposed, under certain conditions. Exhibit G.

23. Due to work and holiday scheduling issues, counsel for the Defendant has been unable to schedule this deposition, but anticipates in January 2006.

24. The parties continue to agree that Mr. Sherrod's deposition is an essential part of this case and must be completed before the filing of pre-trial narrative statement or dispositive motions.

25. In order to complete this necessary task, the parties believe that it is appropriate and desirable to amend the current pre-trial schedule and to delay the filing of pre-trial narrative statements and/or dispositive motions by a period of sixty (90) days.

26. This is a joint motion. No party will be prejudiced by this amendment.

27. Therefore, it is respectfully requested that this Honorable Court amend the pre-trial schedule as follows

- a. Plaintiff's Pretrial Narrative Statement shall be filed by February 6, 2006;
- b. Defendants' Pretrial Narrative Statement shall be filed by February 27, 2006;
- c. Dispositive motions and supporting briefs shall be filed on or before February 27, 2006.
- d. Responses shall be filed by March 20, 2005.
- e. Any reply briefs shall be due on March 27, 2005.

28. The parties also request that the Court's Order specifically permit the taking of Mr. Sherrod's deposition on or before January 31, 2005, unless a further delay is required for documented medical reasons.

WHEREFORE, the parties respectfully and jointly request that this Honorable Court grant the instant motion.

Respectfully submitted,

QUINN, BUSECK, LEEMHUIS, TOOHEY
& KROTO, INC.

By /s/Arthur D. Martinucci
Arthur D. Martinucci, Esquire
Pa. I.D. No. 63699
2222 West Grandview Boulevard
Erie, PA 16506-4509
(814) 833-2222
Attorney for the Defendant,
Booker T. Washington Center

By: /s/Edith Benson
Edith Benson, Esquire
Pa. I.D. No. 33510
4683 Budd Drive
Erie, PA 16506
(814) 838-3670
Attorney for Plaintiff,
James C. Sherrod
(Electronic signature by permission)